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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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IN THE MATTER OF THE COMPETITION IN
THE PROVISION OF ELECTRIC SERVICES
THROUGHOUT THE STATE OF ARIZONA.

DOCKET NO. U-0000-94-165

**STAFF'S RESPONSE IN OPPOSITION TO SRP'S OBJECTION TO PROCEDURAL
ORDERS AND REQUEST FOR A NEW PROCEDURAL ORDER**

Staff of the Arizona Corporation Commission ("Staff") hereby files its response in opposition to SRP's Objection to Procedural Orders and Request For a New Procedural Order. For the reasons discussed below, Staff believes that SRP's request to "restructure" the docket should be denied.

SRP requests that the Procedural Orders issued in this proceeding "be amended to restructure this docket as a legislative proceeding." SRP's Objection, at 2. The only rationale offered for this request is SRP's representation that it will fully participate in a "legislative proceeding" but will not "involve itself" in the proceedings as established by the Chief Hearing Officer. This rationale is rather confusing. The nature of the proceeding does not affect the Commission's jurisdiction over SRP, nor does the level of SRP participation. Since SRP's participation or lack thereof does not change the extent of the Commission's jurisdiction, there is no reason to attempt to define the nature of this proceeding according to SRP's desires.

It is SRP's choice, and SRP's alone, whether to participate in the Commission's proceedings. If SRP chooses not to participate in the evidentiary proceedings then it may do so. What should not occur, however, is for this Commission to be "structuring" its proceedings simply to accommodate the whims of a potential participant.

...

1 SRP suggests that “participants without sufficient resources will simply be shut out”
2 (SRP Objection at 2) unless the proceeding is restructured. This is simply not the case. The
3 Procedural Orders were clearly designed to enable rather than inhibit participation. Those orders
4 were sent to an extensive list of participants in the restructuring proceedings. The December 1,
5 1997, Procedural Order established ample time and opportunity for parties to intervene. In addition,
6 all participants in the Stranded Cost Working Group were designated as parties. All parties,
7 regardless of resources, have the opportunity to file testimony. Where parties do not have an
8 attorney for cross-examination purposes, the Chief Hearing Officer has encouraged them to align
9 themselves with a party that does have an attorney. Furthermore, even if none of these avenues is
10 available to a participant, public comment is available to all.

11 SRP appears to equate the evidentiary proceedings established by the Procedural
12 Orders with adjudicatory proceedings which will decide contested facts involving the amount of
13 stranded cost, the adequacy of mitigation efforts, etc., and other facts specific to particular utilities.
14 That type of hearing is the evidentiary hearing “in a judicial sense” referred to in the Commission
15 pleadings quoted in SRP’s Objection at p. 3, and which Staff believes is contemplated by A.A.C.,
16 R14-2-1607.I. Staff agrees with SRP that such a proceeding is appropriately conducted in separate
17 dockets. By contrast, this proceeding, as stated in the December 1, 1997, Procedural Order, is to
18 consider “generic issues” related to stranded costs and is not inconsistent with the Commission
19 pleading cited by SRP.

20 The final argument advanced by SRP is that its request is consistent with the
21 Administrative Procedures Act (“APA”), § 41-1001 et seq., which establishes procedures for
22 adopting rules. SRP concludes that “the procedural orders have created a proceeding which is
23 inconsistent with rule making under the APA.” SRP’s Objection at 4. However, the APA does not
24 preclude the Commission from utilizing an evidentiary hearing to provide input on potential rules
25 amendments, as requested by many participants in the electric restructuring proceedings. In fact, the
26 first issue identified by the December 1, 1997, Procedural Order, is whether the Electric Competition
27 Rules should be modified regarding stranded costs. If the Commission determines that the rules
28 should be modified, then the Commission will propose amendments and follow the applicable

1 procedures established by the APA. In short, there is nothing regarding these proceedings that is
2 inconsistent with or precluded by the APA.

3 For the foregoing reasons, Staff requests that SPR's Request for a New Procedural
4 Order be denied.

5 RESPECTFULLY SUBMITTED this 5th day of January, 1998.

6 ARIZONA CORPORATION COMMISSION

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